

S

BRIAN P. BROOKS (S.B. #172151)
bbrooks@omm.com
ELIZABETH LEMONDE McKEEN
(S.B. #216690) emckeen@omm.com
DANIELLE N. OAKLEY (S.B. #246295)
doakley@omm.com
O'MELVENY & MYERS LLP
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660
Telephone: (949) 760-9600
Facsimile: (949) 823-6994

Attorneys for Defendant
OCWEN LOAN SERVICING, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MERCEDES HERRERA,

Plaintiff,

v.

LCS FINANCIAL SERVICES
CORPORATION and OCWEN LOAN
SERVICING, LLC,

Defendants.

Case No. C09-02843 TEH

**DEFENDANT OCWEN LOAN
SERVICING, LLC'S SUPPLEMENTAL
RESPONSES AND OBJECTIONS TO
PLAINTIFF'S FIRST REQUEST FOR
THE PRODUCTION OF DOCUMENTS
(NOS. 13-14)**

PROPOUNDING PARTY: PLAINTIFF MERCEDES HERRERA

RESPONDING PARTY: DEFENDANT OCWEN LOAN SERVICING, LLC

SET NO: ONE

Pursuant to the provisions of Rule 34 of the Federal Rules of Civil Procedure,
defendant Ocwen Loan Servicing, LLC ("Ocwen") provides the following supplemental
responses to Plaintiff's First Request for the Production of Documents ("Document
Requests") as follows:

Exh. 5

PRELIMINARY STATEMENT

Ocwen has made a diligent search and reasonable inquiry in an effort to respond to the Document Requests. However, discovery is continuing and Ocwen's investigation into the facts relating to this litigation is ongoing and incomplete. Accordingly, Ocwen responds to the Document Requests based on the information presently available to it and without prejudice to its right to amend or supplement its responses and to present evidence which may hereafter be discovered or become available to it.

Ocwen responds to each request, to the extent it has not been objected to, as Ocwen understands and interprets the request. If Plaintiff subsequently asserts an interpretation of any request which differs from that of Ocwen's, Ocwen reserves the right to supplement its objection and/or response.

To the extent that Ocwen responds to these Document Requests, it does not concede that the information requested is relevant to this action. Ocwen's responses are made without in any way intending to waive or waiving, but on the contrary, intending to preserve and preserving:

(a) The right to raise all questions of authenticity, foundation, relevancy, materiality, privilege and admissibility as evidence for any purpose of information identified in response to the Document Requests that may arise in any subsequent proceeding in, or the trial of, this or any other action;

(b) The right to object to the use of these responses in any subsequent proceeding in, or the trial of, this or any other action;

(c) The right to object to introduction into evidence of these responses; and

(d) The right to object on any ground at any time to other requests or other discovery involving the subject matter thereof.

GENERAL OBJECTIONS

Ocwen incorporates the following General Objections, which are set forth as follows, into each and every objection and individualized response and into each and

1 every amendment, supplement or modification to these responses. Ocwen does not waive
2 any General Objections in response to any specific request propounded.

3 1. Ocwen has assumed that in propounding the Document Requests, Plaintiff
4 did not intend to seek information protected against discovery by the attorney-client
5 privilege, the work product doctrine or any other applicable privilege, immunity or
6 limitation on discovery. To the extent the Document Requests, or any part thereof, are
7 intended to elicit such documents or information, Ocwen objects thereto and asserts the
8 privilege and protection to the fullest extent permitted by law.

9 2. Inadvertent production of any document subject to any applicable privilege
10 or doctrine, including, but not limited to, the attorney-client privilege and work product
11 doctrine, is not intended to be and shall not operate as, a waiver of any such privilege or
12 doctrine, in whole or in part; nor is any such inadvertent production intended to be, nor
13 shall it constitute, a waiver of the right to object to any use of such document, or of the
14 information contained therein.

15 3. Ocwen objects to each and every request to the extent that it seeks
16 information beyond the scope of discovery contemplated by the Federal Rules of Civil
17 Procedure. Ocwen's responses to the Document Requests have been prepared according
18 to the Federal Rules of Civil Procedure, pursuant to a reasonable and duly diligent
19 investigation and search for responsive information and documents. To the extent these
20 requests purport to require more, Ocwen objects because (i) the requests would exceed the
21 scope of permissible discovery contemplated by the Federal Rules of Civil Procedure and
22 (ii) compliance with the requests would be unduly burdensome, harassing, and oppressive.

23 4. Ocwen objects to each request to the extent that it is overly broad or unduly
24 burdensome and would subject Ocwen to oppression, harassment, undue burden or
25 expense.

26 5. Ocwen objects to each request to the extent that it seeks information which
27 is neither relevant to the claim or defense of any party, nor relevant to the subject matter
28 of the litigation, nor reasonably calculated to lead to the discovery of admissible evidence.

1 6. Ocwen objects to each request to the extent that it is vague and ambiguous,
2 or cumulative or duplicative of other requests, and would subject Ocwen to oppression,
3 harassment, undue burden or expense.

4 7. Ocwen objects to each request to the extent that it requires Ocwen to
5 divulge information that may compromise the privacy of any Ocwen customers, including
6 but not limited to information concerning the financial condition or financial profile of
7 customers whose mortgage loans are serviced by Ocwen. Ocwen will not produce such
8 information.

9 8. Ocwen objects to each request to the extent it seeks Ocwen's business
10 secrets, trade secrets, or other confidential business information; competitively or
11 technically sensitive information; or information otherwise subject to confidentiality
12 agreements with third parties.

13 9. Ocwen objects to each request to the extent it seeks disclosure of
14 information where such disclosure would violate any confidentiality agreements, the
15 confidentiality of settlement discussions or agreements or court orders restricting the
16 disclosure of information, or would result in the disclosure of confidential information,
17 trade secrets, or proprietary information.

18 10. Ocwen objects to each request to the extent they purport to impose a burden
19 of producing documents which are not in Ocwen's possession, custody or control.

20 11. Ocwen objects to each request to the extent that it seeks production of "all
21 documents" responsive to the requested categories on the grounds that each request is
22 overly broad, unduly burdensome, oppressive and not reasonably calculated to lead to the
23 discovery of admissible evidence. Ocwen's responses have been prepared according to
24 the Federal Rules of Civil Procedure, pursuant to a reasonable and duly diligent
25 investigation and search for responsive information and documents. To the extent that
26 these requests purport to require more, Ocwen objects because (i) the requests would
27 exceed the scope of permissible discovery contemplated by the Federal Rules of Civil
28

1 Procedure and (ii) compliance with the requests would be unduly burdensome, harassing,
2 and oppressive.

3 12. Ocwen objects to each request to the extent that it seeks production of
4 documents that "relate to" the requested categories on the grounds that each such request
5 is vague, overly broad, unduly burdensome and oppressive. Subject to this objection,
6 Ocwen will produce documents that constitute or refer to the requested matters.

7 13. Ocwen objects to the "instructions" accompanying the requests in that they
8 are not authorized by the Federal Rules of Civil Procedure. Ocwen's responses and any
9 subsequent production of documents will conform to the Federal Rules of Civil
10 Procedure, notwithstanding any purported instructions to the contrary.

11 14. By submitting these responses, Ocwen does not in any way adopt Plaintiff's
12 purported definitions of words and phrases contained in the Document Requests. Ocwen
13 objects to those definitions to the extent that they are inconsistent with either (i) the
14 definitions set for by Ocwen in its responses or (ii) the ordinary and customary meaning
15 of such words and phrases. Likewise, Ocwen objects to Plaintiff's definitions to the
16 extent that they purport to impose upon Ocwen any obligation broader than; or
17 inconsistent with, applicable discovery rules.

18 19 **SPECIFIC RESPONSES AND OBJECTIONS**

20 21 **REQUEST FOR PRODUCTION NO. 13:**

22 All documents and ESI that reflect borrowers contacting you regarding California
23 Code of Civil Procedure § 580b since June 25, 2008, including the communications
24 themselves.

25 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

26 Ocwen objects to this interrogatory to the extent it seeks information protected by
27 the attorney-client privilege and/or attorney work product doctrine. Ocwen further objects
28 to this request to the extent it is not reasonably calculated to lead to the discovery of

1 admissible evidence, particularly in so far as other borrowers' communications with
2 Ocwen, if any, regarding the statute, have no bearing on plaintiff's claims. Ocwen further
3 objects to this request to the extent it is overbroad by failing to limit the "borrowers"
4 described in the request to members of plaintiff's proposed putative class. Ocwen further
5 objects to the request on the grounds that it is burdensome; Ocwen cannot search
6 communications from individual borrowers without doing a loan-by-loan file review, and
7 certainly cannot undertake such a review with respect to the literally hundreds of
8 thousands of loans it services, particularly in light of the lack of relevance the requested
9 communications have to plaintiff's claims.

10 Subject to and without waiving the foregoing objections, Ocwen will produce
11 documents that reflect borrowers contacting Ocwen regarding California Code of Civil
12 Procedure Section 580b since June 25, 2008 that Ocwen is able to locate through a
13 reasonable search.

14 **REQUEST FOR PRODUCTION NO. 14:**

15 All documents and ESI that reflect persons or entities other than borrowers
16 contacting you regarding California Code of Civil Procedure § 580b since June 25, 2008,
17 including the communications themselves.


18 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

19 Ocwen objects to this interrogatory to the extent it seeks information protected by
20 the attorney-client privilege and/or attorney work product doctrine. Ocwen objects to this
21 interrogatory on the grounds that it seeks information that is not reasonably calculated to
22 lead to the discovery of admissible evidence and that has no relevance to the claim or
23 defense of any party, nor the subject matter of this litigation.

24 Subject to and without waiving the foregoing objections, Ocwen will produce
25 documents that reflect entities other than borrowers contacting Ocwen regarding
26 California Code of Civil Procedure Section 580b since June 25, 2008 that Ocwen is able
27 to locate through a reasonable search.
28

1 Dated: May 21, 2010

2 BRIAN P. BROOKS
3 ELIZABETH LEMOND MCKEEN
4 DANIELLE N. OAKLEY
5 O'MELVENY & MYERS LLP

6 By: 
7 Elizabeth Lemond McKeen
8 Attorneys for Defendant
9 OCWEN LOAN SERVICING, LLC
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, Cristina Marie Pappas, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 610 Newport Center Drive, 17th Floor, Newport Beach, California 92660-6429. On May 21, 2010, I served the within documents:

**DEFENDANT OCWEN LOAN SERVICING, LLC'S
SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
PLAINTIFF'S FIRST REQUEST FOR THE PRODUCTION
OF DOCUMENTS (NOS. 13-14)**

☐ by transmitting via facsimile machine the document(s) listed above to the fax number(s) set forth below on this date at approximately 4:23 PM. The outgoing facsimile machine telephone number in this office is (949) 823-6994. The facsimile machines used in this office create a transmission report for each outgoing facsimile transmitted. A copy of the transmission report(s) for the service of this document, properly issued by the facsimile machine(s) that transmitted this document and showing that such transmission was (transmissions were) completed without error, is attached hereto.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Newport Beach, California addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ by putting a true and correct copy thereof, together with an unsigned copy of this declaration, in a sealed envelope designated by the carrier, with delivery fees paid or provided for, for delivery the next business day to the person(s) listed above, and placing the envelope for collection today by the overnight courier in accordance with the firm's ordinary business practices. I am readily familiar with this firm's practice for collection and processing of overnight courier correspondence. In the ordinary course of business, such correspondence collected from me would be processed on the same day, with fees thereon fully prepaid, and deposited that day in a box or other facility regularly maintained by Federal Express, which is an express carrier.

☐ by putting a true and correct copy thereof, together with an unsigned copy of this declaration, in a sealed envelope, with Express Mail postage fully prepaid to the person(s) listed above, and placing the envelope for collection and mailing today with the United States Postal Service as an Express Mail item in accordance with the firm's ordinary business practices. I am readily familiar with this firm's practice for collection and processing of Express Mail correspondence for mailing with the United States Postal Service. In the ordinary course of business, Express Mail correspondence collected from me would be processed on the same day, with Express Mail postage thereon fully prepaid, and placed for deposit that day with the United States Postal Service by depositing it that same day in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail.



2 by causing the document(s) to be emailed or electronically transmitted to the
3 person(s) at the email addresses set forth below, pursuant to a court order or an
4 agreement of the parties to accept service by email or electronic transmission. I
5 did not receive, within a reasonable time after the transmission, any electronic
6 message or other indication that the transmission was unsuccessful.

7 Christopher Brancart, Esq.
8 Brancart & Brancart
9 8205 Pescadero Road
10 Loma Mar, California 94021

11 *(Served by Federal Express)*

12 Andrew M. Steinheimer
13 Mark Ewell Ellis
14 Kimberly Elizabeth Lewellen
15 Ellis, Coleman, Poirier, LaVoie
16 & Steinheimer
17 555 University Avenue, Suite 200 East
18 Sacramento, CA 95825
19 (asteinheimer@ecplslaw.com)
20 (mellis@ecplslaw.com)
21 (klewellen@ecplslaw.com)

22 *(Served by Federal Express)*

23 William Eric Kennedy
24 Law Office of William E. Kennedy
25 2797 Park Avenue, Suite 201
26 Santa Clara, CA 95050
27 (willkennedy@pacbell.net)

28 *(Served by Federal Express)*

Noah Zinner
Housing and Economic Rights
Advocates
P.O. Box 29435
Oakland, CA 94604-0091
(nzinner@heraca.org)

(Served by U.S. Mail)

I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

Executed on May 21, 2010, at Newport Beach, California.


Cristina Marie Pappas